

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Telecommunications)
and Energy on its own motion, pursuant to G.L. c. 159,)
§§ 12 and 16, into Verizon New England Inc.) D.T.E. 01-34
d/b/a Verizon Massachusetts' provision of)
Special Access Services)

DIRECT TESTIMONY

of

KAREN K. FURBISH

On Behalf of

WORLDCOM, INC.

Submitted:
February 6, 2002

Q. PLEASE STATE YOUR NAME, ADDRESS AND POSITION.

A. My name is Karen Furbish. I am Principal Analyst – Access Services, for WorldCom, Inc. My business address is 8521 Leesburg Pike, Vienna, Virginia 22182. Since September 2000, I have been responsible for development and implementation of access-related policies in WorldCom's National Carrier Management organization.

Q. SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.

A. I began my career in telecommunications at the Connecticut Department of Public Utility Control, where I was employed from 1984-1993 in various supervisory and managerial positions in telecommunications and utility regulation, the last four years of which I served as Director of Utility Regulation and Research. I left the Connecticut DPUC to serve as Executive Director of the Connecticut General Assembly's 1993-94 Telecommunications Task Force. My responsibility was to facilitate a negotiated agreement amongst rival parties on exact language for new state laws opening all of Connecticut's intrastate telecommunications markets to competition.

I subsequently worked as an independent telecommunications regulatory consultant from 1994 to 1997 for consumer organizations, law firms, other consulting firms, and new market entrants. In that capacity, I appeared before numerous state commissions and the FCC on matters pertaining to local

market entry policies, quality of service, alternative regulation of ILECs, consumer issues, competition rules, and numbering issues.

From 1997-1999, I was director of research and consulting for Telecommunications Reports International, Inc., where I authored or edited numerous books and reports on telecommunications business and regulatory issues, and conducted research on a contract basis for numerous companies and state regulatory agencies on telecommunications market and policy issues. Prior to Joining WorldCom in 2000, I served as a free-lance author and analyst to the telecommunications trade press, and advised new market entrants on regulatory and business strategies.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. Competing carrier-customers of Verizon remain overwhelmingly dependent on Verizon's interstate and intrastate "last-mile" Special Access services. Thus, the purpose of my testimony is to describe the need for the Massachusetts Department of Telecommunications and Energy (Department) to put in place a system by which it can monitor the provisioning and maintenance of intrastate and interstate Special Access services on a wholesale basis to affiliated and non-affiliated carrier customers, and "special services" on a retail basis to Verizon's end-user customers. I have reviewed, and concur with, the AT&T Communications of New England, Inc. (AT&T) analysis of Verizon's performance data as set forth in the Direct Testimony of Eileen Halloran. The need to apply specific measurements and standards to

Verizon's Special Access services is evident based on Verizon's own self-reported data. In addition to having Verizon report on its performance, the ultimate purpose of my testimony is to encourage the Department to take the steps necessary to ensure that Verizon's competing carrier-customers receive good quality, non-discriminatory performance from Verizon in the provision and maintenance of Special Access Services.

Q. WHAT IS SPECIAL ACCESS?

A. The Federal Communications Commission (FCC) has established two basic categories of access services: Special Access services and switched access services. "Special Access services do not use local switches; instead they employ dedicated facilities that run directly between the end user and the IXC's [interexchange carrier] point of presence (POP). Switched access services, on the other hand, use local exchange switches to route originating and terminating interstate toll calls."¹ Special Access services, which are functionally equivalent to certain unbundled network elements (UNEs), are offered at a number of connection speeds, from analog voice-grade services to digital services – DS0, DS1, DS3, as well as up to very large capacity SONET services. I have attached a diagram (Attachment A) in which it can be seen how Special Access is equivalent to UNE loops and transport.

¹ *Access Charge Reform*, Fifth Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-262, 14 FCC Rcd 14221, at para. 8 and n. 9 (1999) (*Pricing Flexibility Order*), aff'd sub nom. *WorldCom, Inc. v. FCC*, 238 F.3d 449 (D.C.Cir.2001). FCC, 238 F.3d 449 (D.C. Cir. 2001).

It should be noted, however, that the FCC's definition does not capture all the means by which Special Access is used or provided. For example, Special Access is also used to connect end users to competitive Local Exchange Carrier (LEC) collocation facilities. Nor does the FCC's definition take into account the fact that incumbent LECs like Verizon can provide to a retail end user a dedicated circuit from the end user's premises to an IXC POP.

Q. EXPLAIN THE USE OF INTRASTATE SPECIAL ACCESS AND UNBUNDLED NETWORK ELEMENTS VERSUS INTERSTATE SPECIAL ACCESS.

Intrastate Special Access operates in the same manner as interstate Special Access. However, intrastate Special Access is predominantly used to provide local or intraLATA private line-type service to carrier-customers and end users.² Intrastate Special Access use is limited because the FCC's "mixed use" rule³ requires that any circuits carrying 10% or more interstate traffic must be purchased out of an incumbent LEC's interstate access tariff. Where possible, competing carriers will attempt to take advantage of functionally equivalent loop and transport UNEs, which are priced based on TELRIC or some other forward-looking cost method, unlike inter- or intrastate Special Access, which are not. However, as discussed below, there are regulatory and practical limitations to the ordering of UNEs.

² Although Verizon has asserted (footnote 4 of its Reply Comments submitted October 15, 2001 in this proceeding) that WorldCom does not subscribe to any intrastate Special Access service in Massachusetts, a review of billing records from Verizon for the month of August 2001 indicates WorldCom pays monthly charges for a small number of intrastate special access circuits.

³ 47 C.F.R. 36.154

Q. WHAT FACTORS REQUIRE OR “STEER” CARRIERS TO ORDER SPECIAL ACCESS?

A. First, the ability of competing carrier-customers to use a combination of loop and transport UNEs (referred to as “enhanced extended links” or EELs) to connect customers to their own or other carriers’ long distance networks is circumscribed by another set of FCC rules. Under the FCC’s “interim” EELs rules, the conversion of Special Access circuits to EELs is not allowed unless the EEL for a particular customer will carry a “significant amount of local exchange service” [voice] for that customer.⁴ The FCC’s local usage requirements are very restrictive: For example, competing carriers seeking to serve customers with bundled local, long distance and data services, cannot order EELs in most situations.

Second, incumbent LECs have been known to engage in anti-competitive tactics, such as claiming no capacity exists to provision a loop or transport circuit as a UNE, but then having facilities available when the carrier-customer orders the same circuit under the incumbent’s more expensive interstate special access tariff. For example, the Michigan Court of Appeals recently upheld a \$3.75 million fine imposed by the Michigan Public Service Commission against Ameritech for refusing to provide unbundled local transport to a WorldCom subsidiary. Ameritech claimed it lacked facilities necessary to fulfill WorldCom’s orders, and that there was no requirement

⁴ *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Supplemental Order Clarification, rel. June 2, 2000 (FCC 00-183).

under the Telecommunications Act of 1996 to add facilities. The evidence showed that while Ameritech refused to install additional equipment to fulfill WorldCom's orders, it readily did so to serve its own customers or to fill WorldCom's orders for higher cost Special Access service.⁵

Third, there are separate ordering systems and processes in place for carrier-customers to order incumbent LEC facilities: The older, more well-established Access Service Request (ASR) system is much easier for competing carrier-customers like WorldCom to use than the newer, separate, less well-developed Local Service Request (LSR) system for the ordering of UNEs. As a result, CLECs have been steered to order Special Access via ASRs because efficient LSR ordering processes are not available.

Moreover, Verizon and other large ILECs have company-specific account teams to facilitate the sale of their Special Access services, whereas in order to obtain these same last-mile links as UNEs, competing carrier customers must confront several obstacles in addition to the LSR ordering system, e.g., protracted negotiations, arbitrations, lawsuits.

Q. ARE VERIZON AND OTHER INCUMBENT LECS STILL THE DOMINANT PROVIDERS OF “LAST-MILE” FACILITIES LIKE SPECIAL ACCESS?

A. Yes, clearly incumbents like Verizon are still dominant in the provision of all last-mile facilities, whether a competing carrier must order Verizon's

⁵ Michigan Bell Telephone Company, d/b/a Ameritech Michigan, v. Michigan Public Service Commission, and WorldCom Technologies, Inc., unpublished, January 22, 2002. (Attachment B)

facilities as UNEs, or EELs, or intrastate Special Access, or -- most often -- as interstate Special Access.

Competitive LECs and IXC's are dependent on the ubiquitous "last mile" facilities of incumbent LECs like Verizon to compete for larger-volume business and government customers. CLEC's and IXC's compete both against each other and against Verizon to serve higher-volume customers in Massachusetts. While large carriers like AT&T and WorldCom have built some facilities, it simply has not been economically efficient for any competitor to duplicate incumbent LEC networks. And, given the current state of the economy in general and the telecommunications sector in particular, capital funding has either become scarce or so costly that the ability of companies to continue to build out their networks to compete with incumbent LECs is seriously constrained. Even larger companies like WorldCom have been forced to reduce capital expenditures and, therefore, construction of new facilities.

In addition, it is often difficult for competitors to access multi-tenant buildings to put in facilities to serve tenants, where incumbent LECs already have such access. Competitors are often subject to barriers to entry, additional costs and time necessary to serve some buildings, making it more likely that a competitor will resort to ubiquitous facilities of the incumbent LECs to serve a customer.

WorldCom looks first to its own facilities to serve a customer. If no "on-net" facilities are available, then an attempt is made to find another carrier with

available facilities. The first choice is inevitably another competitive access provider (CAP), simply because CAP services are always priced lower than incumbent LECs' Special Access services. If there are no other competing providers available, then service must be ordered from the incumbent LECs, whose facilities are the most ubiquitous. In fact, WorldCom must depend on incumbent LECs to meet 90% of its "off-net" facilities needs. Despite a company policy favoring aggressive use of CAPs and other CLECs, in reality only about 10% of WorldCom's "off-net" requirements are met by other CAPs or CLECs.

Q. IS NON-DISCRIMINATORY PROVISIONING OF SPECIAL ACCESS IS IMPORTANT TO COMPETITION AND ECONOMIC DEVELOPMENT IN THE COMMONWEALTH?

A. Yes. As the New York Public Service Commission stated:

Because Verizon's facilities are used by carriers as they are entering the market, including the local market, on a facilities basis, Verizon's Special Services offerings are crucial for the development of facilities-based competition in the local market, and for the New York economy.⁶

Even in New York, arguably the most competitive market in the U.S., the New York Public Service Commission found that Verizon is overwhelmingly dominant in the provision of "Special Services." The NYPSC upheld this finding on reconsideration after gathering data from all carriers operating in New York, with the results showing that "Verizon serves over 79.5% of the

⁶ New York Public Service Commission, Case 00-C-2051 - *Proceeding to Investigate Methods to Improve and Maintain High Quality Special Services Performance by Verizon New York Inc.* Opinion And Order Modifying Special Services Guidelines For Verizon New York Inc., Conforming Tariff, And Requiring Additional Performance Reporting, June 15, 2001, at p. 10.

statewide market ...”⁷ I believe that a similar analysis conducted in Massachusetts would show that Verizon serves a larger percentage of the statewide market. As such, Verizon’s Special Access facilities represent a key factor in the development of competition to meet the critical telecommunications needs of business and government customers in Massachusetts, and are essential to the Commonwealth’s economy.

Q. WHAT IS THE EFFECT OF VERIZON’S DOMINANCE IN SPECIAL ACCESS ON COMPETITORS?

A. As discussed above, competitive LECs and IXC’s must rely on Verizon’s Special Access service, particularly Verizon’s interstate special access service to compete effectively for higher-volume customers in Massachusetts. At the same time, Verizon can provide equivalent services directly to end users. A key factor required to compete effectively with Verizon (and other competing carriers) is the ability to provide “last-mile” circuits in a timely manner. The poor level of on-time performance provided by Verizon to competitor-customers like WorldCom is an example of Verizon’s ability to leverage its market dominance in an anti-competitive manner.

Of course, specific examples of an incumbent LEC’s leveraging of its Special Access dominance in an anticompetitive manner are exceedingly difficult to document since end users are understandably unwilling to allow their names to be used in regulatory proceedings for fear of service

⁷ New York Public Service Commission, Case 00-C-2051 - *Proceeding to Investigate Methods to Improve and Maintain High Quality Special Services Performance by Verizon New York Inc.*

degradation, service disruption, or other reprisals by the incumbent LEC. Notwithstanding these difficulties, WorldCom did receive permission from one of its customers—Bloomberg Financial Services—to use its name in connection with the New York Public Service Commission’s recent investigation of Verizon’s Special Services. The affidavit is appended to my testimony as Attachment C, which was submitted to the New York PSC, details the ease with which Verizon was able to provision retail circuits directly to Bloomberg, even though (a) Verizon took months to provision identical circuits to Bloomberg on behalf of WorldCom, and (b) each of the Verizon retail orders in question was placed *after* the corresponding orders by WorldCom.

Q. WHAT EFFECT DOES A GRANT OF SEC. 271 APPROVAL HAVE ON VERIZON’S SPECIAL ACCESS DOMINANCE?

- A. Verizon and other BOCs have always had the ability to discriminate against competitor-customers in favor of their own retail customers. However, that incentive increases once the FCC grants to a BOC Sec. 271 authority to provide in-region interLATA services. This has been demonstrated by the degradation of Verizon’s Special Services to competitors in the wake of its Sec. 271 approval, as found by the New York PSC. While the NY PSC did not explicitly tie its investigation into Verizon’s Special

Services performance to Verizon's Sec. 271 authority, the fact is that Verizon's Special Services performance worsened following 271 approval.⁸

In addition, the Texas PUC became the first state commission to require a BOC (SBC) to add the measurement of interstate Special Access when used in lieu of UNEs to its local Performance Plan after reviewing evidence indicating SBC's Special Access performance in Texas declined after receiving 271 approval. The Colorado commission recently confirmed that it intends to condition any support for Qwest's 271 application on a Performance Plan that includes measurement of interstate Special Access when ordered in lieu of UNEs.⁹

Q. DOES VERIZON'S SELF-REPORTED SPECIAL ACCESS PERFORMANCE DATA REVEAL THAT VERIZON HAS PROVIDED BETTER PERFORMANCE TO ITS RETAIL CUSTOMERS THAN TO NON-AFFILIATED CARRIER CUSTOMERS?

A. Yes. I have reviewed the analysis and testimony of AT&T Witness Eileen Halloran that is being submitted in this docket, and concur that Verizon's data shows that Verizon has provided better performance to its retail customers than to non-affiliated carrier customers. The data indicate clearly that Verizon, on average, has a better record of on-time performance in provisioning circuits for its own retail customers. Verizon also offers and completes its retail customers' circuits in shorter intervals. In addition, retail customer' circuits

⁸ Id.

⁹ Public Utilities Commission Of Colorado, Docket No. 01I-041T, *In The Matter Of The Investigation Into Alternative Approaches For A Qwest Corporation Performance Assurance Plan In Colorado*. Decision On Motions For Modification And Clarification Of The Colorado Performance Assurance Plan. November 5, 2001.

suffer fewer troubles following installation than the circuits sold by Verizon to its competing carrier customers.

Q. WHAT ACTIONS DO YOU RECOMMEND THE DEPARTMENT TAKE TO ENSURE THAT VERIZON DELIVERS GOOD PERFORMANCE IN THE PROVISION OF SPECIAL ACCESS AND DOES NOT ENGAGE IN FURTHER DISCRIMINATORY ACTIVITY TO THE DETRIMENT OF COMPETITION IN MASSACHUSETTS?

A. I recommend the Department join the increasing number of states which are recognizing the critical importance of the Special Access services provided by incumbent LECs like Verizon to the economy and competition in their states, and continue to monitor Verizon's performance in its provision of Special Access service to retail customers, affiliates, and non-affiliated carrier-customers.

To date, in addition to New York, Texas and Colorado, other states have determined it is appropriate to monitor ILEC Special Access performance, including Minnesota and Washington. The precise parameters of this expressed intention are currently under review in those states. Also, several other states are actively considering requiring BOCs to report on Special Access performance, including Indiana, Illinois, Tennessee, Georgia, and Maine. In addition, the Rhode Island PUC has stated its intent to open an investigation of Verizon's Special Services.

Q. HOW DO YOU RECOMMEND THE DEPARTMENT MONITOR VERIZON'S SPECIAL ACCESS PERFORMANCE?

A. As an interim measure, the Department should adopt the NY PSC's Special Services Guidelines, and require Verizon to initiate reporting immediately on both a "wholesale" basis, separately for affiliated and non-affiliated customers, and on a retail basis, for each circuit type. Verizon is already very familiar with reporting under the NY Guidelines

As a more permanent step, the Department should also act as quickly as possible to require Verizon to report its performance based on the set of eleven core metrics developed by a national coalition of CLECs and IXC's, including the two principal competitive industry associations, CompTel and ALT's, as well as a leading association of large business users known as eTUG-- the e-commerce and Telecommunications Users Group. These metrics properly measure, for the first time ever, the most important performance-related components of the incumbent LEC's Special Access services. This "Joint Competitive Industry Group" (JCIG) proposal was submitted by the aforementioned coalition to the FCC on January 22, 2002 as part of the competitors' response to the FCC's Notice of Proposed Rulemaking (NPRM), and is included here as Attachment D. Indeed, the New York Guidelines can provide a reasonable interim proxy to measure Verizon's performance and would allow Verizon time to implement the JCIG measurements and standards.

Further, given the evidence of favorable treatment of its retail customers over its wholesale competitor carrier customers, I also recommend that the Department select a third-party auditor to investigate Verizon's current

ordering, provisioning and maintenance policies, procedures and processes used to provide Special Access services to wholesale carrier customers and “specials” to retail end user customers. There is ample precedent for the Department to take this step, as evidenced in its decision to require an audit of Verizon’s local Performance Assurance Plan.

Finally, to the extent the Department ultimately concludes that Verizon is favoring its own retail customers over its competing carrier-customers with respect to the provision of interstate Special Access services, it can request the FCC to fully investigate Verizon’s performance, or delegate to the Department full authority to devise appropriate enforcement mechanisms. As the Department knows, this was the ultimate result of the NY PSC’s investigation.¹⁰

Q. WHAT EFFECT DOES THE FCC’S NOTICE ON ILEC SPECIAL ACCESS PERFORMANCE HAVE ON THE DEPARTMENT’S PROCEEDING?

A. The FCC’s recently issued NPRM does not prevent or preclude the Department’s ability to monitor Verizon’s interstate Special Access and “specials” performance. First, there is no timeline for the FCC to act, nor is there any guarantee that the FCC will ultimately adopt effective performance measurements and standards for incumbent LECs’ Special Access services. Second, and more important, the FCC has explicitly asked for comments on the extent to which state commissions could play a role regarding special access services, noting that under its “mixed use” rule, special access services

taken under federal tariff may carry intrastate traffic (up to 90% of the traffic traversing a circuit purchased from an incumbent LEC's interstate tariff can be intrastate).¹¹

Although the Department has previously expressed concerns about its jurisdiction over Verizon's interstate special access services, based on the findings made in other states like New York, Minnesota, Washington, Colorado, and Texas to date, there is no impediment to a state's ability to require performance *reporting* on circuits provisioned out of an interstate tariff. Special Access circuits, which are functionally equivalent to UNEs, are purchased from Verizon's facilities in Massachusetts to serve customers in Massachusetts. Monitoring of Verizon's interstate and intrastate Special Access services would provide the Department with a complete picture of competing carriers' ability to competitively service Massachusetts customers' "last-mile" needs.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does.

¹⁰ Letter from Maureen O. Helmer, State of New York Department of Public Service, to Chairman Michael K. Powell, FCC (May 22, 2001).

¹¹ *In the Matter of Performance Measurements and Standards for Interstate Special Access Services*, CC Docket No. 01-321, Notice of Proposed Rulemaking, rel. November 19, 2001, at para. 11.